IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 16TH OCTOBER 2006 / 24TH ASWINA 1928

TRC.No. 7 of 2000()

TA.909/1988 of S.T.A.T.ADDL.BENCH,TVM.
.....

PETITIONER:

M/S. RADHAS PRINTERS (CORRUGATED), KOLLAM.

BY ADV. SRI.K.B.MUHAMED KUTTY

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL.GOVT.PLEADER SRIL.V.V. ASOKAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 16/10/2006, ALONG WITH TRC NO. 12 OF 2000 TRC NO. 14 OF 2000 TRC NO. 9 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

T.R.C. NOs. 7, 9, 12 & 14 OF 2000

Dated this the 16th day of October, 2006

JUDGMENT

Ramachandran Nair,J.

The common question raised in all these Tax Revision Cases is whether the petitioner is entitled to sales tax exemption as an industrial unit set up by harijans under notification SRO 969 of 1980 dated 21.10.1980. We have heard senior counsel Dr. K.B. Mohammedkutty appearing for the petitioner and Special Government Pleader Sri.V.V. Asokan appearing for the respondent.

2. Notification SRO 969 of 1980 provides among other things sales tax exemption on products manufactured by small-scale industrial units set up by harijans. Even though the benefit under the notification is generally available for industrial units set up after 1.4.1979, under the first proviso to notification, exemption was available to mini industries, women industrial units and small-scale industrial units set up by harijans even before 1.4.1979, but the exemption will be available only from 1.4.1979 to the date on which such industrial units

complete six years from the effective date of starting commercial production. It is seen from Annexure E that the petitioner started commercial production on 1.5.1978 and if it is a SSI unit set up by harijans, then it is entitled to exemption upto 30.4.1984. Even though petitioner claimed exemption from 1.4.1979 onwards, it appears that petitioner was collecting and remitting tax for six months in 1979-80. However, according to petitioner, collection was later discontinued and petitioner claimed exemption. It is obvious from the records that no certificate of exemption was obtained or produced by petitioner from the Industries Department. According to the petitioner, no such certificate is required to get the benefit of the notification, but petitioner can establish the ingredients of notification by obtaining community certificate and SSI registration. Community certificate was issued to the partners of the petitioner stating that Konda Reddy community to which they belong is a Scheduled Tribe vide order dated 23.1.1984. The District Collector vide Annexure H order dated 24.12.1984 cancelled the certificate stating that Konda Reddy community does not exist in Kerala. Against Annexure H order

petitioner filed Writ Petition in this Court and we are told that the matter stands now remanded to KIRTADS under the Act for conducting an enquiry whether Konda Reddy community is a Scheduled Tribe or not. We do not know whether the decision by KIRTADS itself entitles the petitioner for exemption because the notification does not use the word SC or ST and the eligibility is for small scale industrial units set up by "harijans". It is not known as to whether the Government meant by Harijans all members of SC and ST community. It is a known fact and Government Pleader contended that partners of the petitioner-firm are well known industrialists who are held in high recognition and position in the society. Besides this, it is not known whether the identification of industrial unit with Harijans as proprietorship concern is a requirement of notification, or whether institutions like partnerships and companies owned and managed by Harijans are also entitled to exemption. If benefit has to go to artificial persons like partnerships, companies, trust or the like, then the notification should have defined as to how it has to be identified with the people behind it, and if so, what should be the nature and extent of

shares to be held by members of the eligible community or women to get the benefit. Moreover, the benefit is linked to 90% of the capital employed at a given time, which is not borne out by records. Therefore we are satisfied that none of the authorities, including the Tribunal, has rightly considered the exemption with reference to the conditions stated in the notification. It is now reported by Government Pleader that petitioner has remitted tax for all the years and filing of TRCs is only for refund. We do not think at this point of time, we should decide the issue on merit, because petitioner's claim based on community certificate issued and cancelled by the District Collector now stands referred to KIRTADS for their decision. As and when KIRTADS decides the question, the issue has to be considered afresh which we feel the Assessing Officer should do. Therefore we set aside the order of the Tribunal and that of the authorities below pertaining to the question of exemption and direct the Officer to consider exemption in the light of the above observations and based on certificate to be issued by KIRTADS. If the Officer feels any clarification is required at the Government level, or from the Department of Industries, or Department

of Commercial Taxes, it is upto him to take clarification. In any case no adverse order shall be issued against the petitioner unless a proposal is communicated giving the basis of the same and the party heard in the matter.

TRCs are disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge